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# NATIONAL ENERGY BOARD REASONS FOR DECISION

In the Matter of Applications for  
the Review of Order No. TG-5-79 and for  
an Order fixing Interim Tolls under  
Part IV of the National Energy Board Act

of

**WESTCOAST TRANSMISSION COMPANY LIMITED**

AUGUST 1980





NATIONAL ENERGY BOARD

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WESTCOAST TRANSMISSION COMPANY LIMITED

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Ce rapport est publié  
séparément dans les  
deux langues officielles.



NATIONAL LIBRARY BOARD  
READING THE BOOKS

in the history of exploration for  
the Northwest Coast of North America  
and the history of the Northwest  
Coast of North America



WESTERN CANADIAN LIBRARY BOARD

AUGUST 1980

in the history of exploration for  
the Northwest Coast of North America  
and the history of the Northwest  
Coast of North America

## THE APPLICATIONS

Since 1 November 1979, Westcoast Transmission Company Limited ("Westcoast" or "the Company") has been charging for the transmission of natural gas through its pipeline the tolls prescribed by the Board's Order No. TG-5-79, dated 20 September 1979 and made under Part IV of the National Energy Board Act ("the NEB Act").

By an application dated 31 March 1980 ("the Rate Application"), Westcoast applied to the Board for an Order pursuant to sections 50, 52, and 53 of the NEB Act effective 1 April 1980, disallowing the existing tolls to be charged and received by the Company in accordance with Order No. TG-5-79, and providing a new schedule of tolls providing for certain changes in the manner in which the Company calculates its tolls. The changes requested, which are set out in paragraph 10 of the Rate Application, include an increase in the Rate of Return before Taxes on Rate Base to 19.49 percent from the 16.94 percent authorized by Order No. TG-5-79. In paragraph 11 of the Rate Application, the Company applied for an Order fixing interim tolls on the following basis:

"11. The Applicant hereby applies under Sections 50, 52 and 53 of the NEB Act . . . for an order fixing interim tolls the Applicant may charge for or in respect of gas transported or sold by the Applicant from and after April 1, 1980 which tolls shall be calculated in accordance with





existing Board Order TG-5-79 except that the Rate of Return before Taxes on Rate Base shall be 19.49 percent as calculated in paragraph 10(f) hereof. It would be a condition of any order for interim tolls that the Applicant would refund to those who pay its tolls the portion, if any, of such increase in tolls which are collected and which exceeded those tolls which the Board finds are just and reasonable as a result of its order under paragraph 10 hereof."

Westcoast also requested that the Board determine the part of the Rate Application respecting interim tolls on an ex parte basis.

By Order No. RH-4-80 dated 5 June 1980, the Board set down for public hearing that part of the Rate Application respecting the changes in calculating Westcoast's tolls specified in paragraph 10.

In addition to the Rate Application of 31 March 1980, Westcoast filed two further application under subsection 17(1) of the NEB Act for a review of Order No. TG-5-79. The first of these, also dated 31 March 1980, was for a variation of paragraph 7 of Order No. TG-5-79 to provide that, effective 1 April 1980, Westcoast shall utilize a Rate of Return before Taxes on Rate Base of 17.29 percent in calculating its tolls in lieu of the 16.94 percent authorized by Order No. TG-5-79. The second application, dated 2 April 1980, was for the variation of Order No. TG-5-79 to increase to \$39 million the Operating

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and Maintenance Expense Budget of \$32.8 million set out in Schedule E of the Order for the 12 months ending 30 June 1980.

By letters dated 12 April 1980, the Board provided for the filing of written submissions by Westcoast and interested parties under paragraph 2 of Schedule A to Order No. TG-5-79 relating to the two applications for the review of Order No. TG-5-79. With respect to the interim tolls sought by Westcoast in paragraph 11 of the Rate Application, the Board requested the Company to file a written submission dealing with the jurisdiction of the Board under Part IV of the NEB Act to

1. fix interim tolls subject to refund, and
2. require the refund of any part of such interim tolls subsequently determined to be in excess of those tolls which are just and reasonable.





DECISION

By its letter of 18 June 1980, the Board advised Westcoast and the various interested parties that the two applications for a review under subsection 17(1) of the NEB Act of Order No. TG-5-79 and the request for an Order establishing interim tolls contained in paragraph 11 of the Rate Application had been dismissed. In reaching these decisions, the Board gave careful consideration to the submissions filed by Westcoast and the other parties.

The power to review its orders and decisions which is conferred upon the Board by subsection 17(1) of the NEB Act is one which, in the Board's view, should be exercised with care. Whether circumstances exist which warrant its use is a matter within the discretion of the Board. In exercising that discretion, the Board has regard to such considerations as whether a sufficient doubt has been raised as to the correctness of a prior Board order or decision, and whether circumstances have changed or new facts have arisen since an order or decision was made which justify a review by the Board. The Board also considers it appropriate to have regard to other factors in the exercise of its discretion, such as the timeliness of an application for review, its relationship to other proceedings pending before the Board, and the extent to which the relief sought is available under other provisions of the NEB Act, the regulations, or an order of the Board.





In its application for a review of Order No. TG-5-79 in relation to the Rate of Return before Taxes on Rate Base, Westcoast requested an increase in the Rate of Return from 16.94 to 17.29 percent effective 1 April 1980. The basis for this application is that since the Board determined the appropriate Rate of Return for Westcoast in September, 1979, the embedded cost of debt has increased from 8.63 to 9.27 percent due to rising interest rates. Westcoast has financed recent expenditures with short-term borrowing at prevailing, higher interest rates. The Company has not proposed any change in this application in the cost component for preferred shares or common equity contained in the overall Rate of Return.

In the Board's view, it should not review Order No. TG-5-79 in the manner proposed by Westcoast. The Rate of Return provided for in that Order was established on the basis of circumstances forecast to prevail in the period from 1 July 1979 to 30 June 1980. If significant changes in those conditions have occurred which justify a re-examination of the Rate of Return previously awarded, then the Board should reassess all aspects of the Rate of Return in view of those changed circumstances, rather than considering a change in only one of those cost components. By Order No. RH-4-80, the Board has set the Rate Application down for a public hearing. One of the subjects to be considered at the hearing is Westcoast's request to increase the Rate of Return before Taxes





on Rate Base from 16.94 to 19.49 percent effective 1 April 1980. The Board does not consider it appropriate to use its power to review to vary the Rate of Return in a summary manner in advance of the public hearing at which all aspects of Westcoast's Rate of Return are to be in issue.

In the second application for review, Westcoast has requested the Board to increase the Operating and Maintenance Expense Budget for the 12 months ending 30 June 1980 from \$32.8 million to \$39 million. Paragraph 8 of Order No. TG-5-79 provides that Westcoast is not to include in its tolls to be charged, commencing 1 November 1979, any amount on account of Operating and Maintenance Expenses which, when added to the amounts actually incurred in the months of July to October, 1979, would exceed the amounts specified in Schedule E to the Order. Paragraph 9 of the Order requires that any Operating and Maintenance Expenses incurred in excess of the amounts set out in Schedule E be deferred and included in Account 179. As indicated in paragraph 7 of Schedule A to the Order, the Board will subsequently provide for the disposition of the deferred costs. An express procedure has been provided for in Order No. TG-5-79 to deal with overruns of Operating and Maintenance Expenses. If the Board were to undertake the review proposed by Westcoast, it could involve dealing with the issues relating to the overruns twice: once on the review and again under the procedures in Order No. TG-5-79





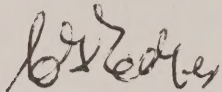
when the actual overruns to 30 June 1980 are known. The Board does not consider it appropriate to use the power to review in these circumstances where Order No. TG-5-79 already provides the procedure for disposing of Operating and Maintenance Expenses deferred by Westcoast.

The interim tolls requested by Westcoast in paragraph 11 of the Rate Application would be based on the Rate of Return set out in paragraph 10(f) of that application. As is clear from paragraph 11, the Company is proposing that the Board make an order fixing the interim tolls effective 1 April 1980, pending a determination by the Board of what tolls would be just and reasonable. That determination will not be made until after the hearing set down by Order No. RH-4-80. There is no provision in Part IV of the NEB Act which expressly provides for an order permitting the charging of interim tolls by a company. Section 52 of the NEB Act requires that all tolls be just and reasonable. If the Board were to make the order requested by Westcoast, that order would provide for the recovery of tolls which the Board had not found to be just and reasonable. The fact that such an order would be subject to a condition requiring the refund of any amount recovered in excess of the tolls subsequently found to be just and reasonable does not appear to overcome the problem of making the order in the first place; that is, the tolls had not been determined by the Board to be just and reasonable. In the

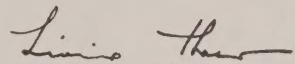


Board's opinion, it does not have the jurisdiction to make the order for interim tolls requested by Westcoast.

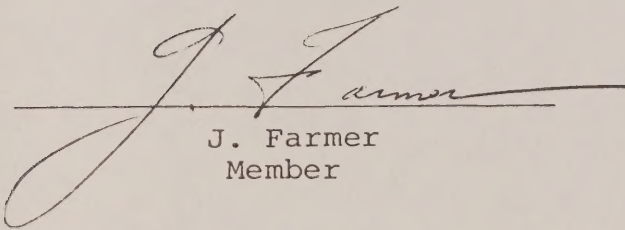
For these reasons, the Board concluded, as indicated in the letter of 18 June 1980, that the two applications by Westcoast for the review of Order No. TG-5-79 and the application for interim tolls set out in paragraph 11 of the Rate Application should be dismissed.



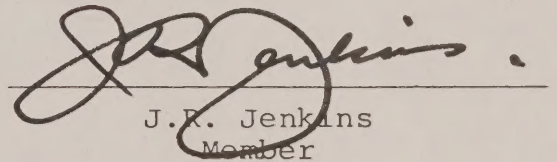
C.G. Edge  
Vice Chairman



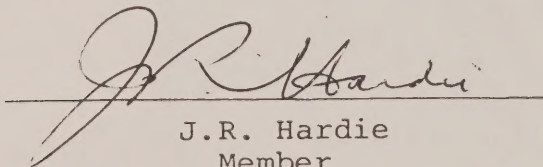
L.M. Thur  
Associate Vice Chairman



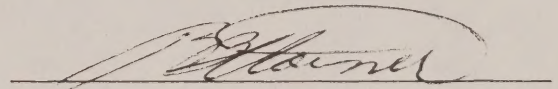
J. Farmer  
Member



J.R. Jenkins  
Member



J.R. Hardie  
Member



R.B. Horner  
Member



Board's opinion, it does not have the jurisdiction to make the order for interim relief requested by Westcoast.

For these reasons, the Board concluded, as indicated in the letter of 12 June 1980, that the two applications by Westcoast for the review of Order No. 75-5-12 and the application for interim relief set out in paragraph 11 of the Rate Application should be dismissed.



*[Signature]*  
M. M. Tait  
Vice Chairman

*[Signature]*  
C.C. Edge  
Vice Chairman

*[Signature]*  
J. J. Lusk  
Member

*[Signature]*  
J. J. Lusk  
Member

*[Signature]*  
R. G. Horner  
Member

*[Signature]*  
J. E. Kergie  
Member





